

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6912

Petition of Primus Telecommunications, Inc., )  
for Approval of a Transfer of Control )

Order entered: 12/19/2003

**I. INTRODUCTION**

This case involves a petition filed on November 3, 2003, by Primus Telecommunications, Inc. ("Primus" or the "Petitioner"), seeking Vermont Public Service Board ("Board") approval, under 30 V.S.A. § 107, of a corporate reorganization which will interpose Primus Telecommunications Holding, Inc. ("PTH"), a holding company, between Primus and Primus Telecommunications Group, Inc., the ultimate parent corporation of Primus. As a result of the transaction, Primus will become a wholly-owned subsidiary of PTH.

On December 8, 2003, the Vermont Department of Public Service ("Department") submitted a letter to the Board indicating that the Department had no objection to the *pro forma* transfer of control of Primus to PTH. The Department noted that the transfer of control should not affect the services received by customers of Primus or cause inconvenience or confusion to the customers of Primus. Further, the Department stated no objection to the issuance of an order without hearing or further investigation, as provided under 30 V.S.A. § 107.

The Board has reviewed the petition and the accompanying documents and agrees that approval should be granted without hearing.

**II. FINDINGS OF FACT**

Based upon the petition and accompanying documents, we hereby make the following findings of fact.

1. Primus was issued a Certificate of Public Good (CPG No. 285) to provide intrastate telecommunications services on October 29, 1997. Primus is a wholly-owned subsidiary of PTG. PTG is not certificated as a telecommunications carrier in Vermont. Petition at 1 and Exhibit A.
2. PTH is a newly created intermediate holding company and wholly-owned subsidiary of PTG. Pursuant to corporate reorganization, Primus will become a subsidiary of PTH, resulting in

a *pro forma* transfer of control of Primus. However, the ultimate parent company of both companies, PTG, will remain unchanged. Petition at Exhibit A.

3. Primus will continue to operate under its current name and tariff. Accordingly, the transfer will not cause any inconvenience for Vermont consumers. Petition at 3 and Exhibit A.

4. The proposed transaction will promote the public interest in that it will allow Primus and its owners to improve the operational and cost efficiencies of Primus's business, thereby enhancing Primus's ability to compete in the telecommunications market and ensuring the continued existence of telecommunications competition in Vermont. Petition at Exhibit A.

### **III. DISCUSSION**

The proposed transaction requires approval by the Board under 30 V.S.A § 107. This statute conditions approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A § 107). This standard is met in this case.

Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A. § 107(c)(1).<sup>1</sup> In order to approve the acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

After reviewing the petition, we conclude that 30 V.S.A. § 107 applies because the transaction contemplated will result in Primus becoming a wholly-owned subsidiary of PTH, resulting in the indirect transfer of controlling interest of Primus. We further conclude that the transfer of control will not affect the services that Primus currently provides to customers in Vermont. Primus will continue to operate under its current name and tariff. The proposed transaction will also allow Primus to operate more efficiently in Vermont, which will, in turn, result in competition among providers of telecommunications services in Vermont. The resulting

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1. The statute also provides that "[t]he presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule." 30 V.S.A. § 107(c)(1).

transfer of control, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. § 107 and should be approved.

**IV. CONCLUSIONS**

The transfer of control of Primus should be approved because the transaction will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. § 107(b).

**V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The transfer of control of Primus Telecommunications, Inc., will promote the public good and, therefore, is approved.
2. Petitioner shall file a letter notifying the Board of the completion of the transaction within one week of such completion.

DATED at Montpelier, Vermont, this 19<sup>th</sup> day of December, 2003.

s/Michael H. Dworkin	)	PUBLIC SERVICE  BOARD  OF VERMONT
)		
s/David C. Coen	)	
)		
)		
s/John D. Burke	)	

OFFICE OF THE CLERK

Filed: December 19, 2003

Attest: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*